

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CARLOS TOVAR-MENDOZA,

Petitioner,

vs.

No. CV 18-00982 KG/LF

RICHARDO MARTINEZ,

Respondent.

ORDER

THIS MATTER is before the Court *sua sponte* on the Entry of Appearance Pro Se filed by Petitioner Carlos Tovar-Mendoza. (Doc. 1). In his Entry of Appearance, Petitioner Tovar-Mendoza states, under penalty of perjury, that he retained counsel to file a petition for writ of habeas corpus under 28 U.S.C. § 2254 on his behalf. Although retained counsel accepted a retainer fee, counsel has never filed the § 2254 petition and the statute of limitations for filing a § 2254 petition has expired. (Doc. 1 at 1-5). Petitioner Tovar-Mendoza asks the Court to apply the doctrine of equitable tolling and permit him to file a § 2254 petition.

The Court declines to reach the question of whether a § 2254 petition filed by Petitioner Tovar-Mendoza is timely under 28 U.S.C. § . § 2244(d)(1) at this time. However, Petitioner Tovar-Mendoza has made a *prima facie* showing of entitlement to equitable tolling of the statute of limitations governing § 2254 petitions. *See Marsh v. Soares*, 223 F.3d 1217, 1220 (10th Cir. 2000); *Burger v. Scott*, 317 F.3d 1133, 1141 (10th Cir. 2003). Therefore, the Court will permit Tovar-Mendoza to file a § 2254 petition in proper form within thirty (30) days of entry of this

Memorandum Opinion and Order. Petitioner is also notified that, in addition to filing a § 2254 petition in proper form, he must pay the \$5 filing fee or submit an application to proceed without prepayment of fees and costs under 28 U.S.C. § 1915.

IT IS ORDERED:

(1) Petitioner Carlos Tovar-Mendoza is granted leave to file a petition for writ of habeas corpus under 28 U.S.C. § 2254 within thirty (30) days of entry of this Order; and

(2) the Clerk is directed to send Petitioner Tovar-Mendoza a form Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 with instructions and two copies of an Application to Proceed in the District Court without Prepaying Fees and Costs under 28 U.S.C. § 1915.


UNITED STATES MAGISTRATE JUDGE